

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA  
*ex rel. JOHN KING, et al.,*  
*Plaintiffs,*

v.

SOLVAY S.A., *et al.,*  
*Defendants.*

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CIVIL ACTION H-06-2662

**ORDER**

Pending before the court is a motion for partial summary judgment filed by defendant Abbott Products, Inc., f/k/a Solvay Pharmaceuticals, Inc. (“SPI”) (Dkt. 232) and a motion to strike summary judgment evidence filed by Relators (Dkt. 238). Originally, the court was also considering a motion under Rule 56(d) of the Federal Rules of Civil Procedure in which relators Tammy Drummond and John King (the “Relators”) requested a continuance on the motion for summary judgment until they had more time to gather evidence. Dkt. 239. The court held a hearing on the motion to strike evidence and the Rule 56(d) motion on April 3, 2014. Dkt. 262. At the hearing, the court granted the motion for additional time, advised the parties to work together to resolve the evidentiary issues, and instructed the parties to submit a joint status report. Dkt. 266. At the time, the court anticipated that Relators would file a new response at some point in June 2014. *See id.* In accordance with these expectations, on May 2, 2014, the parties filed a joint status report in which they advised the court that June 19, 2014, was an appropriate deadline for Relators to file a response to SPI’s motion for summary judgment. Dkt. 268.

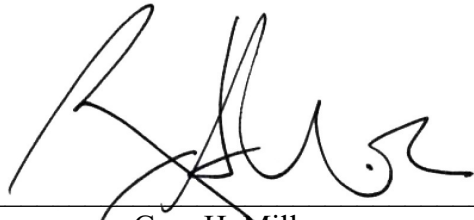
Unfortunately, the evidence gathering did not proceed as quickly as expected. On June 17, 2014, the parties submitted an agreed letter in which they informed the court that SPI had found new

sources of documents; the parties agreed to extend the response deadline to July 19, 2014. Dkt. 274. On July 21, 2014, the court received another agreed letter. Dkt. 276. The parties advised that the circumstances warranted an additional extension of time; they agreed to a response deadline of August 28, 2014. Dkt. 276. On August 29, 2014, Relators filed their amended response to SPI's motion. Dkt. 286. This response included 378 exhibits. Dkts. 286–87. The parties also submitted a joint status report on August 28, 2014, in which they advised the court that they had reached agreements with regard to many of the evidentiary issues raised in the Relators' motion to strike summary judgment evidence. Dkt. 284. There were still, however, issues with the evidence submitted related to eight states. *Id.* On September 8, 2014, the court received another status report from SPI. Dkt. 297. In this report, SPI advised that it would like to file a reply to Relators' response and perhaps lodge objections to the more than 350 new exhibits, which it had not had an opportunity to review. *Id.* SPI requested, given the volume of materials, until October 7, 2014 to file a reply. *Id.* SPI noted that Relators did not object to this date. *Id.*

The court finds, given the dramatic change in the evidentiary landscape since SPI filed its original motion, that it is best to start with fresh briefing. SPI filed its original motion on November 20, 2013. Dkt. 232. The motion to strike was filed on December 23, 2013. Dkt. 238. The motions were not fully briefed until January 30, 2014, and it took two more months for the court to review the materials and set and hold a hearing. Then, as noted above, after the court determined that Relators' request for more time to conduct discovery was warranted, there were numerous delays. And there is a plethora of new evidence. The court believes that all parties (and the court) will benefit from briefing in which the parties are able to tailor their arguments to the current state of the record. Accordingly, SPI's motion for partial summary judgment and Relators' motion to strike

(Dkts. 232, 238) are hereby DENIED WITHOUT PREJUDICE. SPI shall file a renewed motion for partial summary judgment on the PDL issue on or before October 7, 2014.<sup>1</sup> Relators shall file their response and any objections to SPI's motion within twenty-one days, and SPI shall have five days to reply.<sup>2</sup>

Signed at Houston, Texas on September 10, 2014.

  
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Gray H. Miller  
United States District Judge

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<sup>1</sup> The dispositive motion deadline is currently set for March 6, 2015 (Dkt. 247), and remains unchanged. This order relates only to SPI's motion for partial summary judgment on the PDL issue, which the court would like to address prior to any other dispositive motions that may be filed.

<sup>2</sup> Since SPI already has had a preview of the evidence Relators will likely submit with their response, the court is highly unlikely to entertain a motion to extend the reply deadline.